

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Agreement”) is made between the State of Michigan Medicaid Fraud Control Unit and the State of Michigan; and EPMG (collectively in all, the “Parties”), through its authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Emergency Physicians Medical Group, P.C., EPMG of Michigan, P.C., Susquehanna Emergency Physicians Associates, P.C., EPMG of Pennsylvania, P.C. and EPMG of Ohio, Inc., P.A. (collectively “EPMG”) staffs emergency departments in hospitals in the State of Michigan. EPMG is a participating Medicare Part B provider, a participating CHAMPUS provider, and a participating Medicaid provider in the State of Michigan.

B. EPMG has entered into a settlement agreement with the United States of America, acting through its Department of Justice (the “Department of Justice”); the Office of Inspector General of the United States Department of Health and Human Services (“HHS-OIG”); the TRICARE Management Activity (TMA, formerly Office of the Civilian Health and Medical Program of the Uniformed Services aka “CHAMPUS”), a field activity of the Office of the Secretary of Defense, through the General Counsel, Office of CHAMPUS; the United States Department of Defense; the Federal Employees Health Benefits Plan (“FEHBP”), administered by the United States Office of Personnel Management (“OPM”); (collectively, the “United States”), and the Relator in the Sealed Action pending in the U.S. District Court for the Western District of Oklahoma. Collectively, these agreements address the United States’ and the

Participating States' civil Medicaid claims against EPMG for claims which are further described in paragraphs C-E below, and involve emergency room services which were reviewed, assigned a Physician's Current Procedural Terminology ("CPT") code, and billed by Emergency Physicians Billing Service ("EPBS") on behalf of EPMG

C. The State of Michigan contends that EPMG contracted with Emergency Physicians Billing Service ("EPBS") to submit or cause to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997), the TRICARE Program, 10 U.S.C. §§ 1071-1106; the FEHBP, 5 U.S.C. §§ 88901-8914, and the Medicaid Program, 42 U.S.C. §§ 1396-1396v (1997).

D. This Agreement addresses the State of Michigan's civil claims against EPMG based on conduct alleged in the Sealed Action pending in the Western District of Oklahoma (the "Sealed Action") and the State's civil claims against EPMG based on conduct involving the coding by EPBS of emergency room services on behalf of EPMG (the "Covered Conduct"), as described in paragraph E of this Agreement.

E. The State of Michigan alleges that between 1990 and September 24, 1999, claims which were reviewed, assigned to a CPT code and billed through EPBS on behalf of EPMG were incorrectly assigned a CPT code which designated a more complicated treatment than was actually documented as being rendered by EPMG. The State contends that this and the further detailed Covered Conduct may have resulted in the submission of claims that are actionable under state common and statutory law and under the False Claims Act, 31 U.S.C. §§ 3729-3733.

F. EPMG denies the contentions of the State of Michigan as set forth in paragraphs C through E, above.

G. The Parties mutually desire to settle this matter.

TERMS AND CONDITIONS

NOW, THEREFORE, in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereby agree as follow:

1. Total Settlement Amount. EPMG agrees to pay the United States and the Participating States, collectively, the total sum of two million, three hundred fifty thousand dollars (\$2,350,000.00).

2. State Medicaid Settlement Amount. Pursuant to this Agreement with the State of Michigan, EPMG shall pay the principal amount of \$519,820.00 from the total settlement to settle jointly funded Michigan Medicaid claims. Of this amount, \$292,658.66 will settle the federally-funded portion of the Medicaid claims with respect to the State of Michigan and has been paid in accordance with the terms and conditions set forth in the agreement by and between EPMG and the federal government. The remaining \$227,161.34 will settle the state-funded portion of the Medicaid claims with respect to the State of Michigan. EPMG agrees to transfer the state-funded Medicaid portions of the settlement amount to the Michigan Medicaid Fraud Control Unit at Office of the Attorney General, Health Care Fraud Division, 6520 Mercantile Way, Suite 3, Lansing, Michigan 48913, Attn: Wallace Hart, Director, within ten (10) business days of execution of this Agreement.

3 Corporate Integrity Plan. EPMG has entered into a Corporate Integrity Agreement (“CIA”) with OIG-HHS, attached as Exhibit A, which is adopted herein and made a part of this Agreement. EPMG agrees it will adhere to all terms of the CIA in its Medicaid billings to the State of Michigan. The State of Michigan shall be entitled to request and to review all reports, and have access to all information, which EPMG is required to report, produce, or maintain pursuant to the CIA either through OIG-HHS, or directly from EPMG.

4 Dismissal and Release. In consideration of the obligations set forth in this Agreement, conditioned upon EPMG’s payment in full of the settlement amounts set out in the Agreement, and subject to the exceptions in paragraph 5 below, the State of Michigan releases and discharges EPMG and (subject to the limitations set forth in paragraph 6 below) its current and former shareholders, officers, directors, employees, subsidiaries, predecessors, successors and assigns, from any civil or administrative monetary claims the State of Michigan now has or may have under the common law or any civil statutory provisions of the State of Michigan, for the matters as described in paragraphs D-E of this Agreement.

5 Waiver of Exclusion. EPMG shall be permitted to continue to participate in the State of Michigan’s Medicaid Program. The State agrees that it will not impose a Medicaid program exclusion or other suspension or debarment upon EPMG for the conduct described in paragraphs C-E above. Nothing in this paragraph precludes the state from taking action against EPMG in the event that EPMG is excluded by the federal government, or for conduct and practices which are not described in paragraphs C-E of this Agreement. EPMG acknowledges that the State of Michigan does not have the authority to release EPMG from any claims or actions for debarment which may be asserted by private insurers, including those that are paid on a capitated basis for providing health care to the State’s Medicaid recipients.

6. Limitations of Release. Nothing in this agreement shall be construed as limiting any rights that any other person or entity may have against EPMG. Except as provided in paragraph 4 of this Agreement, the State of Michigan does not release EPMG or any other entity or individual from (a) any state criminal liability arising from the conduct described in paragraphs C-E of this Agreement; (b) any civil or administrative liability to the State (or any agencies thereof) for any conduct other than the conduct identified in paragraphs C-E; (c) any claims against individuals who are criminally indicted and convicted of an offense related to the conduct alleged in paragraphs C-E above, including former directors, officers, and employees of EPMG; [the term “convicted” shall have the meaning set forth in 42 U.S.C. § 1320a-7(i)]; (d) any claims relating to obligations created by this Agreement; (e) any claims for defective or deficient services, including such claims as may be brought under Michigan’s consumer protection statutes; (f) any claims against entities or persons other than EPMG, its current and former shareholders, officers, directors, employees, subsidiaries, predecessors, successors and assigns, including any other named defendants in the Sealed Action; or (g) any potential criminal, civil, or administrative claims arising under federal or state tax laws.

7. Concurrent with the execution of this Agreement, the State of Michigan will join a request to be filed under the terms of EPMG’s settlement with the United States, noting the State does not object to the Court entering an order to dismiss with prejudice the claims against EPMG in the Sealed Action, subject to the terms of this Agreement.

8. Tax Characterization. Nothing in this Agreement constitutes an agreement by the State of Michigan concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any State tax laws.

9. Negotiating Team Costs. In addition to all other payments and responsibilities under this Agreement, EPMG has agreed to pay the reasonable travel costs and expenses of the States' designated negotiator, in the amount of \$1,200.00. Said payment shall be made to the National Association of Medicaid Fraud Control Units, Attn: Barbara Zelner, 750 First Street NE, Suite 1100, Washington, DC 20002-4241, within ten (10) days of the execution of this Agreement.

10. Unallowable Costs. EPMG agrees that it will not seek payment for any of the health care billings covered by this Agreement from Federal health care program beneficiaries or their parents or sponsors. EPMG waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this agreement. EPMG also agrees that it will not seek or claim as costs from any State of Michigan entity any expenses related to this Agreement, including the expenses related to negotiation or enforcement of the Agreement.

11. Waiver of Double Jeopardy Defense. With respect to the conduct covered by this Agreement, EPMG hereby waives any defenses it may have to any criminal prosecution, which defenses may be based in whole or in part on the Double Jeopardy Clause of the Constitution or the holding or principles set forth in *United States v. Halper*, 490 U.S. 435 (1989) and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amounts paid under this Agreement are not punitive in nature or effect in any such criminal prosecution or administrative action related to exclusion. Nothing in this Agreement constitutes an agreement by the State of Michigan concerning the characterization of amounts paid for purposes of the Internal Revenue Code, Title 26.

12. Venue for Enforcement, Interpretation or Dispute Resolution Should any action to enforce or interpret this Agreement, or to resolve any dispute hereunder be required, the Parties acknowledge the jurisdiction of the federal courts and agree that venue for any such action shall be in the United States District Court for the Western District of Oklahoma, except that any disputes arising out of the CIA shall be resolved in the manner set forth in the CIA.

13. Capacity to Execute Agreement Each Party signing this Agreement in a representative capacity represents that he or she does so voluntarily and is duly authorized to do so.

14. Entire Agreement This Agreement and its attachments constitutes the entire agreement between the Parties with respect to the matters contained herein, and may not be modified except by a writing signed by all Parties hereto.

15. Executed Counterparts This Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original and all of which constitute one and the same agreement.

16. Binding Nature of Agreement This Agreement is binding on all successors, heirs, assigns and transferees of the Parties.

17. Effective Date. This Agreement shall become final and binding only upon the signing of each and every respective Party hereto, and is effective on the date of signature of the last signatory to the Agreement.

FOR Emergency Physicians Medical Group, P.C.,
EPMG of Michigan, P.C., Susquehanna Emergency
Physicians Associates, P.C., EPMG of Pennsylvania,
P.C. and EPMG of Ohio, Inc., P.A. ("EPMG")

By: John R. Riddle

Title: President

Date: 3/3/03

FOR The State of Michigan
Attorney General

Wallace T. Hart

Wallace T. Hart
Medicaid Fraud Control Unit Director
Office of the Attorney General
Health Care Fraud Division
6520 Mercantile Way, Suite 3
Lansing, Michigan 48913

Date: 12-19-02

For the Medicaid program of the State of Michigan

By: John A. Fyfe

Date: 1-10-03